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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/747,471 11/12/96 FALLEY

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QM22/0626

EXAMINER

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ART UNIT	PAPER NUMBER
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3727

DATE MAILED:

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17

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademark

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<b>Office Action Summary</b>	Application No. 08/747,471	Applicant(s) PALLEY ET AL.
	Examiner Niki M. Eloshway	Art Unit 3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 17 May 2001.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-52 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-52 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. § 119

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_ .
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

#### Attachment(s)

- 15) Notice of References Cited (PTO-892)
- 16) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ .
- 18) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_ .
- 19) Notice of Informal Patent Application (PTO-152)
- 20) Other: \_\_\_\_\_ .

**DETAILED ACTION**

*Specification*

1. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

*Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 2, 8-13, 16, 17, 20, 21, 25-43 and 46-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sacks (U.S. 5,249,534) in view of Mykleby (U.S. 4,266,670). Sacks discloses the claimed device except for the loops at the ends of the band and except for the pin. Mykleby discloses that it is known in the art to connect two ends with a pin extending through loops in each end (see elements 32 and 42 in figure 8). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the band of Sacks with the band ends having loops which are connected by a pin, as taught by Mykleby, in order to fasten the two band ends together more securely. The pin and loop engagement would be more secure than the hook and loop engagement discussed in Sacks.

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Sacks teaches a band which is discussed in col. 2 lines 4-7. The band can be made of SPECTRA, as set forth in col. 1 lines 33-42. Regarding claim 13, the container about which the band is located is discussed in col. 1 line 65- col. 2 line 7 of Sacks.

Regarding the term "integral" in claim 27, the term "integral" is sufficiently broad to embrace constructions united by such means as fastening and welding (in re Hotte (C.C.P.A.) 157 U.S.P.Q. 326); the term is not necessarily restricted to a one-piece article (in re Kohno (C.C.P.A.) 157 U.S.P.Q. 275); and may be construed as relatively broad (in re Dike (C.C.P.A.) 157 U.S.P.Q. 581).

4. Claims 3-6, 22, 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sacks in view of Mykleby, as applied to claims 1 and 17 above, and further in view of Kolom (U.S. 5,054,635). The modified device of Sacks does not teach the material of the pins. Kolom teaches that it is known to provide a container with pins which are made of metal (see col. 4 line 68- col. 5 line 2). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified container of Sacks with the pins being made of the material discussed in Kolom, in order to make the pins of increased strength.

5. Claims 7 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sacks in view of Mykleby, as applied to claims 1 and 17 above, and further in view of Sholl (U.S. 3,611,512). The modified device of Sacks discloses the claimed invention except for the pin being a rope. Sholl teaches that it is known to provide a pin made of rope (see element 22). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified band of Sacks with the pin being made of rope, as taught by Sholl, in order to use less expensive material.

6. Claims 14, 15, 18, 19, 44 and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sacks in view of Mykleby, as applied to claims 13, 17 and 39 above, and further in view Gettle et al. (U.S. 5,225,622). The modified device of Sacks discloses the claimed invention except for the blast mitigating material. Gettle et al. teach that it is known to provide a container with aqueous foam (see

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line 11 of the Abstract). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified container of Sacks with the aqueous foam of Gettle et al., in order to attenuate pressure waves.

7. Claim 51 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chavez (U.S. 5,033,161) in view of Sholl (U.S. 3,611,512). Chavez discloses the claimed invention except for the pin being a rope. Sholl teaches that it is known to provide a pin made of rope (see element 22). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the hinge of Chavez with the pin being made of rope, as taught by Sholl, in order to use less expensive material.

8. Claim 52 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sacks (U.S. 5,249,534) in view of Chavez (U.S. 5,033,161). Sacks discloses the claimed device except for the loops at the ends of the band and except for the pin. Chavez discloses that it is known in the art to connect two ends with a pin extending through loops in each end (see elements 3 and 5). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the band of Sacks with the band ends having loops which are connected by a pin, as taught by Chavez, in order to fasten the two band ends together more securely. The pin and loop engagement would be more secure than the hook and loop engagement discussed in Sacks.

*Allowable Subject Matter*

9. Claims 7 and 24 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

10. Applicant's arguments filed May 17, 2001 have been fully considered but they are not persuasive.

11. *Claims 1, 2, 8-13, 16, 17, 20, 21, 25-43 and 46-50 remain rejected over Sacks, as modified by Mykleby.*

Applicant argues that "Sacks fails to teach the interrupted band" (page 2 of response). The examiner disagrees with this position. Sacks teaches the use of three interrupted bands encircling a container. Specifically, in col. 1 lines 65-68, Sacks sets forth a first interrupted/discontinuous band. In col. 1 line 68 through col. 2 line 4, Sacks discloses a second interrupted/discontinuous band and in col. 2 lines 4-7 Sacks discloses a third interrupted/discontinuous band wherein the two ends are connected together.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Sacks teaches that two ends of an interrupted/discontinuous band are connected together (col. 2 lines 4-7) and Mykleby teaches a means to connect two ends together. The teaching and suggestion to connect two ends together using a pin and loop assembly is found in the secondary reference of Mykleby.

Applicant states that one end of the band of Sacks is "covered by subsequent wraps/turns of the band" (page 3 of response). This may be the case in a certain embodiment of the Sacks invention,

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however, it is not the case in every embodiment of the Sacks invention. Sacks specifically states in col. 2 lines 4-7 that the third panel or band has “its ends connected together”.

12. *Claims 3-6, 22 and 23 remain rejected over Sacks, as modified by Mykleby and Kolom.*

13. Applicant argues that Kolom does not teach the use of a high strength fiber. The examiner disagrees with this position. Firstly, it is noted that the features upon which applicant relies (i.e., the use of high strength fibers) are not recited in the rejected claims. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Claims 3 and 22 recite that the pin is made of a “material being selected from the group consisting of metal...”. In col. 4 line 68 through col. 5 line 2, Kolom discloses that the pin may be made of steel or aluminum.

Claim 4 sets forth that the pin is made of a “metal being selected from the group consisting of steel, steel alloys, aluminum ...”. In col. 4 line 68 through col. 5 line 2, Kolom discloses that the pin may be made of steel or aluminum.

Claim 5 sets forth that the pin is made of “reinforcing fiber being selected from the group consisting of aluminum fibers ... steel fibers”. In col. 4 line 68 through col. 5 line 2, Kolom discloses that the pin may be made of steel, aluminum or multi-strand filament. The term filament is defined in Webster's New Riverside University Dictionary (1994) as “[a] fine or thinly spun thread, fiber, or wire.” (**emphasis added**)

14. *Claims 7 and 24 were rejected over Sacks, as modified by Mykleby and Sholl.*

The rejection of claims 7 and 24 has been withdrawn.

15. *Claims 14, 15, 18, 19, 44 and 45 remain rejected over Sacks, as modified by Mykleby and Gettle et al.*

The arguments regarding claims 14, 15, 18, 19, 44 and 45, have been addressed above.

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16. *Claim 51 remains rejected over Chavez, as modified by Sholl.*

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Chavez teaches the use of a pin to connect two elements. Sholl teaches the use of a rope to connect two elements. The teaching and suggestion to attach two elements using a rope is found in the secondary reference of Sholl.

17. *Claim 52 remains rejected over Sacks, as modified by Sholl.*

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "that the pin can be formed of flexible material selected from the group consisting of rope, roving, unitape, shield, braid, belt, fabric and combinations thereof", as set forth in page 4 of the response.) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

### *Conclusion*

18. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-

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MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

19. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703)305-3579. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into group 3720 will be promptly forwarded to the examiner.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Niki M. Eloshway whose telephone number is (703) 308-1606. Any inquiry of a general nature or relating to the status of this application should be directed to the 3700 Customer Service Office at (703) 306-5648.

*anw*  
Allan N. Shoap  
Supervisory Patent Examiner  
Group 3700

*Niki M. Eloshway*  
Niki M. Eloshway  
Patent Examiner  
June 25, 2001